

Attorney Docket No.: J6571(C)
Serial No.: 10/771,645
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Confirmation No.: 3724

BRIEF FOR APPELLANT

Sir:

This is a Brief for appellant's Appeal submitted in response to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on March 9, 2007, concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; C.F.R. §1.136.

BRIEF FOR APPELLANT

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I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Conopco, Inc., a corporation of the State of New York, d/b/a Unilever.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1 through 5, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

IV. STATUS OF AMENDMENTS

No Amendments after the Final Rejection have been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a package having a wall and a label adhered to the wall (claim 1(b)). The wall underneath the label contains graphics and the label also contains graphics which complement the graphics on the wall (claim 1(b)). Complement is further explained to mean that the graphics form a first part of a scene on the label and the wall also contains graphics which form a second part of the same scene which underlies the first part of the scene

from the label (claim 1(b)). The label is partially translucent so that the graphics underlying the label are visible (claim 1(b)). Furthermore, the graphics adhered to the wall must remain intact when the label is removed from the wall (claim 1(c)) so as not to be damaged or destroyed. The package also contains a chamber defined by at least one wall containing graphics (claim 1(a)). The invention provides the consumer with an attractive package for use in the home while at the same time satisfying the requirements for product labeling in the store. Once the consumer takes the package home, they can remove the legally required labeling portion (i.e., the label removeably affixed to the wall of the package – claim 1(b)) but still retain the essence of the aesthetic graphics that appealed to the consumer in the first place (see specification, page 1, lines 14-26 and page 2, lines 12-22). Preferably, the label is partially transparent (claim 2). In a preferred embodiment, the label is affixed to the wall with a reworkable pressure sensitive acrylic adhesive (claim 3) which facilitates removal of the label without damaging the underlying graphics adhered to the wall. In further preferred embodiments the package label comprises polypropylene (claim 4) and the amount of force needed to remove the reworkable label is within the range of 8-35 ounces per inch (claim 5).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

35 U.S.C. § 102(b)

Claims 1-2 were rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz (2,398,257).

35 U.S.C. § 103(a)

Claims 3-5 were rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz (2,398,257).

VII. ARGUMENT

35 USC §102 (b)

The examiner's rejection of claims 1 and 2 under 35 U.S.C. 102 (b), second paragraph, as being anticipated should be reversed.

The examiner asserts that Schwartz (2,398,257) discloses a chamber (1) having at least one wall containing graphics (the at least one wall being the surface including the graphics "CHEWING GUM"), a label (4-band having overlapping ends 9, 10 secured together by any suitable adhesive – col. 2, lines 45-50) removably affixed directed to said wall and said graphics (as indicated in figure 8 and col. 2, lines 39-44 – the band is removably slid as a tube over the package), the label being partially translucent so that a portion of said wall is visible underneath said label (col. 2, lines 12-26), the label and the wall containing graphics which complement each other (col. 2, lines 14-26), wherein said label contains graphics which form a first part of a scene and said wall contains graphics which form a second part of said scene which underlies the first part of said scene (col. 2, lines 14-26), and wherein said wall and said graphics adhered to said wall remain intact when said label is removed (as seen in figures 1 and 8).

The examiner further asserts that official notice is taken of the use of the claimed elements, such elements are notoriously old and well known in the art and their use would have been an obvious mechanical design expedient to a skilled artisan. In response, applicants respectfully point out the following errors in these rejections whereby a prima facie case under both 35 U.S.C. §§ 102(b) and 103(a) has not been properly established.

Schwartz (U.S. Patent No. 2,398,257) discloses a package with a wall containing a printed label wherein the package and printed label are surrounded by a transparent sleeve containing only "vertical spaced dark lines" (see column 2, lines 3-26). Schwartz further teaches that the object illustrated in the printed label will appear animated upon movement of the transparent sleeve. Applicants respectfully submit that the spaced vertical lines of Schwartz are not "graphics" nor do they complement the image illustrated underlying the wrapper. The skilled person would understand the "graphics" as that term is used in the instant specification

means informative label graphics representing indicia of an attractive design (see page 1, lines 18-19, page 4, lines 13-20). The spaced vertical lines of Schwartz are neither “indicia” nor an “attractive design” and are not “graphics” as claimed.

As stated above, the spaced vertical lines of the wrapper of Schwartz do not complement the image on the printed label underlying the spaced vertical lines. The skilled person would understand that images that complement each other as described in the instant specification on page 6, lines 14-19, have a logical connection with each other. The spaced vertical lines have no logical connection for Schwartz nor form parts of the same scene. Schwartz is concerned with created a moiré-like animating effect when the wrapper is moved in relation to the underlying label. There is thus no logical connection between the spaced vertical lines and the image as is required in the claim. The animating effect described by Schwartz is an artifact caused by the user when she physically manipulates the package as described by Schwartz.

The examiner asserts erroneously that applicants rely on functional differences between the art of record and the instant claims. Applicants respectfully submit function is not relied on, nor is it relevant, as the art of record simply does not disclose “complementary graphics” as claimed in the instant case.

35 USC §103 (a)

The examiner’s rejection of claims 3-5 under 35 U.S.C. 103 (a) and (e) as being unpatentable over Schwartz should be reversed.

For the reasons given above, the claim term “complementary graphics” is not disclosed or suggested by Schwartz, and therefore applicants respectfully submit a proper prima facie case under §103(a) has not been established for claims 3-5.

VIII. CLAIMS APPENDIX

1. A package comprising:
 - a) a chamber defined by at least one wall containing graphics;
 - b) a label removably affixed directly to said wall and said graphics, said label being partially translucent so that a portion of said wall is visible underneath said label, said label and said wall contains graphics which complement each other, wherein said label contains graphics which form a first part of a scene and said wall contains graphics which form a second part of said scene which underlies the first part of said scene; and
 - c) wherein said wall and said graphics adhered to said wall remain intact when said label is removed.
2. The package according to claim 1 wherein said label is partially transparent.
3. The package according to claim 1 wherein said label is affixed to said wall with a reworkable pressure sensitive acrylic adhesive.
4. The package according to claim 1 wherein said label comprises polypropylene.
5. The package according to claim 1 wherein the amount of force needed to remove the removable label is within the range of 8-35 ounces/inch.

IX. EVIDENCE APPENDIX

No evidence pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132 or any other evidence has been entered by the examiner and relied upon by the appellant in this appeal.

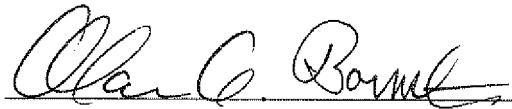
X. RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court or the Board in any proceeding related to this appeal.

CONCLUSION

In view of the above, Appellants respectfully submit that a proper rejection under 35 U.S.C. §§ 102(b) and 103(a) has not been made. Accordingly, reversal of the Final Rejection by the Honorable Board is appropriate and is courteously solicited.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan A. Bornstein", written over a horizontal line.

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